

DIVISION III

ARKANSAS COURT OF APPEALS

No. CACR05-1348

Opinion Delivered JANUARY 17, 2007

RODNEY DALE EDGIN
APPELLANT

A P P E A L F R O M T H E
M O N T G O M E R Y C O U N T Y
C I R C U I T C O U R T
[NO. CR-2002-45]

V.

HON. J.W. LOONEY,
JUDGE

STATE OF ARKANSAS
APPELLEE

REBRIEFING ORDERED

Robert J. Gladwin, Judge

This is a no-merit appeal from appellant's conviction in Montgomery County Circuit Court of driving while intoxicated (DWI) fourth offense. Appellant was sentenced to a term of five years in the Arkansas Department of Correction and fined \$2,000. After examining the adverse rulings addressed by counsel and appellant Rodney Dale Edgins' pro se arguments, along with arguments from the State, we hold that an appeal from one of the adverse rulings would not be wholly frivolous. Therefore, we deny counsel's motion to withdraw and order rebriefing on the issue of appellant's motion for mistrial.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals, appellant's counsel has filed a motion to withdraw on the grounds that this appeal is without merit. Counsel's motion was accompanied by a brief referring to two adverse rulings from the Court. One was a denial

of appellant's motion for directed verdict of not guilty, made at the end of the State's case and again at the end of all evidence. The second was a denial of appellant's motion for a mistrial, requested because the prosecutor, during cross-examination of appellant, elicited testimony that referred to previous occasions when the appellant had consumed too much alcohol and was incarcerated as a result. Appellant's counsel claims that the trial court's denial of these motions was proper and does not constitute error. The clerk of this court furnished the appellant with a copy of his counsel's brief and notified him of his right to file a pro se brief. Appellant filed pro se points, attacking the trial court's denial of appellant's motions for directed verdict, alleging that the evidence was insufficient, and did not address the motion for mistrial. The State responded to appellant's arguments by claiming that the appellant's conviction was supported by substantial evidence.

We disagree with appellant's counsel's claim that the appeal of the trial court's denial of appellant's motion for mistrial is wholly without merit. Appellant's counsel argues that, even though the prosecutor came perilously close, he did not ask the appellant whether he had been arrested or convicted for DWI on those dates he testified that he had to take a nap after he drank too much. After appellant asked for a mistrial, the trial court denied the motion, overruling the objection. The State then abandoned this line of questioning.

A trial court is granted wide latitude of discretion in granting or denying a motion for mistrial, and the decision of the court will not be reversed except for an abuse of that discretion or manifest prejudice to the complaining party. *Barker v. State*, 52 Ark. App. 248, 916 S.W.2d 775 (1996). While not holding that the trial court's adverse ruling constitutes

an abuse of discretion, this court does not believe an appeal of the trial court's decision regarding appellant's motion for mistrial is wholly without merit. Therefore, we order that appellant's counsel fully brief the issue of whether the State should have been allowed to elicit testimony of appellant's prior arrests on cross-examination in the precise way in which it was done.

Rebriefing ordered.

PITTMAN, C.J., and ROBBINS, J., agree.